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July 31, 1953
Opin. No. 53-143

TO: Mr. John M. Scott, Vice-Chairman
Arizona Highway Commission
Show Low, Arizona.

RE: Your telephone request of July
14, 1953.

QUESTION: Whether a criminal identification
office may be constructed and equip-
ped out of state highway funds where
such construction has been author-
ized under the capital outlay account
of the highway patrol by the General
Appropriations Act, 21st Legislature,
First Regular Session.

The pertinent portions of the General Appropriations Act, 21st
Legislature, First Regular Session, pertaining to this problem are
set out under Subdivision 72, and are quoted as follows:

"From any unencumbered balances remaining in the
State Highway Fund as of June 30, 1953, there is
heroby appropriated:

* * * * *

Highway Patrol

Capital Outlay

Building and equipping facilities for criminal
identification office and other capital outlay
\$68,850.00."

The issue presented by your question is briefly whether the
above appropriation is in conformity with the constitutional prohib-
ition against the use of highway funds for other than highway pur-
poses. The General Appropriations Act, like other acts of the Leg-
islature, must be construed to give effect to the legislative intent
of the Legislature. The above amount allocated for capital outlay
is a lump sum appropriation subject to the condition that some por-
tion of the appropriation be allocated to building and equipping a
criminal identification office. The Legislature has in this instance
left the amount to be allocated within the discretion of the Highway
Department. Such procedure is not unusual and has been affirmed by
the Supreme Court of Arizona in the case of *STATE BOARD OF HEALTH vs*
FROMMILLER, 42 Ariz. 231. By House Concurrent Resolution No. 2 dated
March 14, 1952, a constitutional amendment was referred to the vote of
the people at the General Election held on November 4, 1952. Such
amendment was known as the "Better Roads Amendment" and was passed and

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proclaimed by the Governor to be the law of this State on November 24, 1952. Since the amendment is a short one, it is quoted below in its entirety:

"Section 14. No moneys derived from fees, excises, or license taxes relating to registration, operation, or use of vehicles on the public highways, or to fuels used for the propulsion of such vehicles, shall be expended for other than cost of administering such laws, statutory refunds and adjustments provided therein, payment of highway obligations, cost of construction, reconstruction, maintenance and repair of public highways and bridges, county, city and town roads and streets, and for distribution to counties, incorporated cities and towns in an amount not less than that as provided by law on July 1, 1952, to be used by them only for the purposes permitted by law on that date, expense of state enforcement of traffic laws, and payment of costs for publication and distribution of Arizona Highway Magazine, provided, however, that this section shall not apply to moneys derived from the automobile license tax imposed under Section 11 of Article IX of the Constitution of Arizona."

The purpose of the above amendment is set forth in State of Arizona Initiative and Referendum Publicity Pamphlet, 1952, at page 3:

"100 Yes, relating to the expenditure of revenues for highway purposes, a proposed amendment to the Arizona Constitution, is being submitted to the people by Resolution of the Legislature.

Popularly called the better roads amendment, its purpose is to insure the expenditure of all revenues derived from road users to road uses only. These road uses (highway purposes) are delineated in the amendment. They include costs of building and repairing public highways, streets, and roads in the state, counties, cities, and towns and costs attendant thereto such as: administration, refunds, bonding, traffic enforcement, and the Arizona Highways magazine."

From the above it is clear that such Constitutional Amendment would be binding and controlling upon the Legislature as the Constitution has always been a limitation upon the powers of that body.

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In GLENDALE UNION HIGH SCHOOL vs PEORIA S.D. 55 Ariz. 150, the import of this limitation was reiterated as follows:

"The Legislature of Arizona has full power and control, not only over the levy of taxes but over the disposition of all public revenue, and this power extends to such funds as are acquired by any political subdivision of the state, subject only to such constitutional restrictions as exist."

In application of the Constitutional Amendment we are faced with the problem of construing the intent of the Legislature as it applies to the patrol capital outlay account set out in the General Appropriations Act. There are two possible constructions with regard to the above mentioned Act. By Article 2, Chapter 45, A.C.A. 1939, a specific bureau of criminal identification is set up. The principal purpose of said bureau is outlined under Sections 45-202 and 45-205, A.C.A. 1939:

"45-202. SUPERINTENDENT OF BUREAU-ASSISTANCE TO PEACE OFFICERS.-* * * * The bureau shall when requested by the sheriff of any county, the chief of police or city marshall, or constable, of any incorporated town or city, furnish him assistance in his work with the other peace officers throughout the state and in promoting greater efficiency in detecting and apprehending criminals and enforcing the criminal laws of the state."

"45-205. PROVISIONS FOR IDENTIFICATION OF CRIMINALS.-The bureau shall install systems of identification of criminals, including the finger print system, the modus operandi system and such other systems and methods as the superintendent may deem proper. Said bureau shall obtain from whatever sources available finger and thumb prints, measurements, photographs, plates, outline pictures, descriptions and such other information as may be necessary of persons who have been or may be hereafter arrested within this state, or who are known to be habitual criminals. The bureau shall keep a complete record of all such information received and shall index same in a manner convenient for ready reference and comparison."

It is to be noted that the principal purpose of the above bureau

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is to aid in the enforcement of the criminal laws of the state and that such bureau is sustained by appropriations from the General Fund. The principal duties of said agency are confined to the enforcement of criminal laws as opposed to traffic laws. Thus, if the Legislature intended to construct facilities for the criminal identification bureau out of Highway funds, such appropriation would be in clear derogation of the above constitutional amendment and would be invalid and unconstitutional. However, if the Legislature intended to allocate highway funds for the purpose of constructing a criminal identification office in conjunction with and as a part of the Highway Patrol, such appropriation would be lawful and would not violate the terms of the above amendment. In construing the statute as to its constitutionality, there are a number of well settled rules of construction the first and foremost of which is that a statute will be presumed to be constitutional unless the contrary clearly appears. This rule has been concisely stated in the case of MARICOPA COUNTY vs EQUITABLE LIFE INSURANCE SOCIETY, 42 Ariz. 569, at page 573:

"While the language of section 3101, supra, seems to bear the construction contended for by the defendant county, it ought not to be given that construction if it is susceptible of any other fair and reasonable interpretation. The rule is that, if a statute is susceptible of two or more interpretations, it will be given the one that is not obnoxious to the Constitution, on the theory that the Legislature could not have intended to enact an illegal statute. * * *"

To the same effect, see FEARS vs STATE, 33 Ariz. 432; TWONY BROS. CO. vs KENNEDY, 44 S. Ct. 636, 295 F. 462, 265 U.S. 575, 68 L. Ed. 1187; STEWARD vs ATLANTIC NAT. BANK OF BOSTON, 27 F. (2d) 224; LAIRD vs SIMS, 16 Ariz. 521; L.R.A. 1915E, 519; TIMMONS vs WRIGHT, 22 Ariz. 135; ARIZONA STATE BANK vs CRYSTAL ICE AND COLD STORAGE CO. 26 Ariz. 205; SMITH vs MAHONEY, 22 Ariz. 342; BLACK AND WHITE TAXICAB CO. vs STANDARD OIL CO. 25 Ariz. 381; HARTFORD FIRE INS. CO. vs JONES, 31 Ariz. 8, 31 Ariz. 289; STATE vs SMITH, 31 Ariz. 297; STATE vs CHILDS, 32 Ariz. 222, 54 A.L.R. 736; A.T. & S.F. RY. CO. vs STATE, 33 Ariz. 440, 58 A.L.R. 563; PRESCOTT COURIER, INC. vs MOORE, 35 Ariz. 26; AUTOMATIC REGISTERING MACH. CO. vs PINA COUNTY, 36 Ariz. 367; STATE vs ROSEBERRY, 37 Ariz. 78; SELLERS vs FROMMILLER, 42 Ariz. 239; MARICOPA COUNTY vs EQUITABLE LIFE ASSUR. SOC. OF U.S. 42 Ariz. 569; STATE vs ANGLAN, 43 Ariz. 362; OGLESBY vs PACIFIC FINANCE CORPORATION OF CALIFORNIA, 44 Ariz. 449; STEWART vs ROBERTSON, 45 Ariz. 143; STATE vs HOOKER, 45 Ariz. 202; BOARD OF REGENTS OF THE UNIVERSITY OF ARIZONA vs SULLIVAN, 45 Ariz. 245; CRANE vs FROMMILLER, 45 Ariz. 490; PRIDEAUX vs FROMMILLER, 56 P. (2d) 628.

With the above rule of construction in mind, let us examine the powers and duties of the Highway Patrol to see if the construction of a criminal identification office would be within the scope of authority of that body.

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The Highway Patrol is created and given its duties under Article 7, Chapter 66, A.C.A. 1939, 1952 Supplement, and Sections 66-701 and 66-704:

"66-701

"The patrol superintendent and patrolmen shall be vested with the authority of peace officers, primarily for the purpose of enforcing laws relating to the use of highways and operation of vehicles thereon, but shall never be used as peace officers in connection with any strike or labor dispute."

"66-704

"It shall be the duty of the Arizona Highway Patrol to patrol the highways of the state, both day and night, and enforce the laws relating to the use of the highways; to investigate all accidents which occur upon the highways, and to procure the names of the drivers and the descriptions and license numbers of the motor vehicles involved, and to transmit forthwith to the vehicle superintendent a copy of the report of such investigation."

The court has construed the above sections in the case of STATE vs HENDRICKS, 66 Ariz. 235. The specific issue raised in that case was whether an attempted bribe of a highway officer was a criminal act in view of the fact that the highway officer was acting in his capacity as a peace officer in attempting to prevent a gambling den from operating. The defense raised was that the officer's duties were confined to the enforcement of traffic laws only.

"And Sec. 66-704 setting forth the duties of the patrol states in part that 'It shall be the duty of the Arizona highway patrol to patrol the highways of the state, both day and night, and enforce the laws relating to the USE of the highways; * *!' (emphasis supplied)

(4) First, only a highly restrictive definition of the statutory phrase 'use of highways' would fail to include their use as a funnel from which to draw innocent participants for illegal gaming. And only a hypertechnical interpretation of the statute would deny that directing travelers on the highway to proper law enforcement officers is beyond the scope of the proper duties of a patrolman. Statutes must be construed as to the fair import of their terms. * * * * As a peace officer it was certainly within the scope of Whitlow's duties to report known violations of criminal law and to assist those who make such complaints to find the proper officers by whom and before whom complaints must be filed. * * * *"

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Thus, the court has given the patrol duties a somewhat larger scope than a strict reading of the statute would indicate. It may be inferred, therefore, that the construction or maintenance of a criminal identification office in connection with the duties of the patrol would be within the scope of their authority.

Thus, despite the fact that the above appropriation might well be construed as meaning an appropriation from the Highway Fund in support of the criminal identification bureau set up by Chapter 45, Article 2, A.C.A. 1939, since there are other reasonable constructions of this section the overwhelming weight of authority would be in support of constitutionality.

It is the conclusion of this office, therefore, that the intent of the Legislature with regard to the Highway Patrol Capital Account in the General Appropriation Act, 21st Legislature, First Regular Session, was to the effect that such identification office was for and under the authority of the Highway Patrol and that under such construction of the legislative intent, the appropriation would be constitutional.

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